

The Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES ROLAND CHEATHAM, *et al.*,

Defendants.

NO. CR18-131-RAJ

**SECOND MOTION FOR PROTECTIVE
ORDER TO RESTRAIN CERTAIN
FORFEITABLE PROPERTY**

NOTE ON MOTION CALENDAR:
December 28, 2018

I. RELIEF REQUESTED

The United States, by and through its undersigned counsel, moves pursuant to 21 U.S.C. § 853(e)(1)(A) for entry of a protective order restraining the following forfeitable property pending resolution of this case:

1. One Sig Sauer P220, .45 caliber pistol, bearing Serial No. G232888, and any associated ammunition, seized on or about June 6, 2018, in Tumwater, Washington.

As detailed below, this property is subject to forfeiture, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c) (property involved or used in a firearm offense), and should therefore remain available to the United States for that purpose until this case is resolved.

II. RELEVANT PROCEDURAL FACTS

The defendants in this case were indicted on May 30, 2018, on charges of *Conspiracy to Distribute Controlled Substances*, among other offenses. Dkt. No. 1. The United States gave notice of its intent to seek forfeiture in the Indictment. *Id.* at 18–20. Shortly thereafter, on June 6, 2018, law enforcement executed numerous search and seizure warrants at various locations associated with the defendants. *See* Affidavit of Federal Bureau of Investigation (“FBI”) Task Force Officer (“TFO”) Jonathan Huber in Support of the United States’ Second Motion for Entry of a Protective Order, attached as Ex. A, ¶ 6. The firearm and ammunition identified above (hereafter, the “Subject Property”) were seized during the execution of those warrants. *See id.* ¶¶ 24–28.

On November 28, 2018, the defendants in this case were charged by Superseding Indictment on multiple counts, including *Carrying a Firearm During and in Relation to a Drug Trafficking Crime*, in violation of 18 U.S.C. § 924(c)(1)(A)(i) and 2, and *Felon in Possession of a Firearm*, in violation of 18 U.S.C. §§ 922(g)(1) and 2. Dkt. No. 414. The Superseding Indictment also included forfeiture allegations that provided notice of the United States’ intent to forfeit, among other assets, any firearms or ammunition involved or used in any knowing violation of 18 U.S.C. §§ 922(g) or 924. *See id.* at 36–37. On December 20, 2018, the United States filed a Forfeiture Bill of Particulars providing notice of the United States’ intent to forfeit the Subject Property pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c).¹ Dkt. No. 497.

After the Subject Property was seized, the Drug Enforcement Administration (“DEA”) initiated administrative forfeiture proceedings against it. *See Ex. A*, ¶ 7. An administrative claim has been made to the Subject Property (the claim was not filed by a defendant named in this case). *Id.* Pursuant to 18 U.S.C. § 983(a)(3)(A)-(C), therefore, the United States is now required either to file a civil judicial forfeiture action against the

¹ The Subject Property was previously identified in Counts 46–47 of the Superseding Indictment. Dkt. No. 414, at 24–25.

1 Subject Property or to pursue its forfeiture in this criminal case and take steps to maintain
 2 custody of it. As reflected in the Forfeiture Bill of Particulars, the United States is
 3 pursuing criminal forfeiture of the Subject Property and now seeks its continued restraint
 4 for that purpose. Currently, the Subject Property is in federal custody. *See Ex. A, ¶ 7.*

5 **III. GOVERNING LAW AND ARGUMENT**

6 The United States requests that the Court issue a protective order restraining the
 7 Subject Property until this case is resolved, pursuant to 21 U.S.C. § 853(e)(1)(A). This
 8 statutory section authorizes the Court to enter orders or to fashion other remedies to
 9 preserve the availability of property subject to criminal forfeiture. *See United States v.*
 10 *Monsanto*, 491 U.S. 600, 612 (1989) (“Under § 853(e)(1), the trial court ‘may’ enter a
 11 restraining order if the United States requests it[.]”). Where there is probable cause to
 12 believe the relevant property is forfeitable, the United States is typically allowed to
 13 restrain it. *See United States v. Kaley*, 571 U.S. 320, 323 (2014) (“[P]re-trial asset
 14 restraint [is] constitutionally permissible whenever there is probable cause to believe that
 15 the property is forfeitable.”); *see also Monsanto*, 491 U.S. at 615–16 (recognizing that
 16 Section 853(e)(1) allows for the pretrial restraint of assets where there is probable cause
 17 to believe they are forfeitable, stating “it would be odd to conclude that the Government
 18 may not restrain property . . . based on a finding of probable cause, when we have held
 19 that . . . the Government may restrain *persons* where there is a finding of probable cause
 20 to believe that the accused has committed a serious offense”).

21 Here, the Subject Property was seized during a search of a vehicle registered in the
 22 name of Defendant Alonzo Williams Baggett, who has been charged by Indictment and
 23 Superseding Indictment. *See* Dkt. Nos. 1 and 414. A Grand Jury, therefore, has already
 24 determined that there is probable cause to believe that Defendant Baggett committed the
 25 criminal offenses with which he has been charged—including *Carrying a Firearm*
 26 *During and in Relation to a Drug Trafficking Crime* and *Felon in Possession of a*
 27 *Firearm*. *See* Dkt. No. 414, at 24–25. If convicted of either of those offenses, any
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1 firearms and ammunition involved in the offenses are forfeitable. *See* 18 U.S.C.
2 § 924(d)(1) and 28 U.S.C. § 2461(c).

3 The facts reflecting the involvement of the Subject Property in those offenses—
4 i.e., stating probable cause for its forfeiture—are detailed in the attached affidavit of TFO
5 Huber, as well as in the affidavit submitted in support of the application for the search
6 warrants issued in W.D. Wash. Case No. MJ18-246-BAT (which TFO Huber’s affidavit
7 incorporates by reference).² *See Ex. A*, ¶¶ 16, 24–28. These facts include, but are not
8 limited to: investigators’ discovery of the Subject Property in a vehicle registered to
9 Baggett (*id.* ¶ 26); the recovery of the Subject Property from a backpack that also
10 contained currency and various substances that positively identified as heroin and cocaine
11 (*id.*); and Baggett’s prior convictions of multiple crimes punishable by imprisonment for
12 a term exceeding one year. *Id.* ¶ 27.

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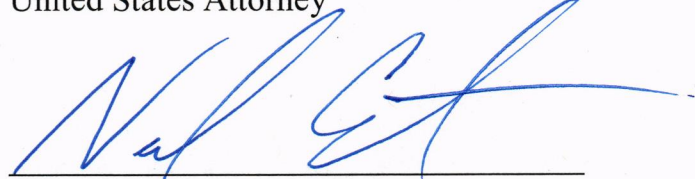
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27 ² The application and supporting affidavit have previously been unsealed. *See* MJ18-246-BAT, Dkt. Nos.
28 1 and 115.

1 Based on these and the other facts detailed in TFO Huber's affidavit, the United
2 States contends there is probable cause to believe that the Subject Property is subject to
3 forfeiture. To preserve the Subject Property's availability for criminal forfeiture
4 proceedings, the United States respectfully requests that the Court enter a protective order
5 permitting its continued restraint through the conclusion of this case. A proposed order is
6 submitted with this motion.

7 DATED this 20th day of December, 2018.

8 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record.



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